

# **MEETING SUMMARY NOTES**

## **Finance Work Group**

*March 12, 2003*

*3:30 p.m., Room 113, County-City Bldg.*

**MEMBERS:** Present - Brad Korell, Keith Brown, Bob Hampton, Connie Jensen, Dan Marvin, Polly McMullen, Richard Meginnis, Tom Schleich, Kent Seacrest, Roger Severin, Tim Thietje, Terry Werner, Otis Young, Larry Zink  
Allan Abbott (nonvoting)

Absent - Lowell Berg, Jim Budde, Ron Ecklund, Mark Hesser

**OTHERS:** Kent Morgan, Ken Bunger, John Kuehl, Karen Klein, Chuck Addy, Margaret Remmenga, Lauren Wismer, Steve Hubka, Roger Figard, Nick McElvain, Peter Katt, Bruce Bohrer, Hallie Salem, Michele Abendroth

### **AGENDA ITEMS DISCUSSION:**

#### **1. Welcome - Brad Korell, Work Group Chair**

Mr. Korell called the meeting to order at 3:33 p.m. and welcomed those present.

#### **2. Meeting Summary Notes - February 27, 2003**

Mr. Korell asked if there were any changes to the "Meeting Summary Notes" from the February 27, 2003 meeting. None were suggested.

#### **3. Public Comment Period**

Mr. Korell asked if there were members of the public present who would like to address the Work Group at this time. There were none.

#### **4. Future Meeting Locations**

Mr. Morgan stated that all future meetings, except March 19<sup>th</sup>, will be held in Room 113. The March 19<sup>th</sup> meeting will be in the Mayor's Conference Room.

Mr. Korell stated that the consultants for LES have received the work group's list of funding ideas. They will evaluate those ideas and will be at the March 27<sup>th</sup> meeting to discuss that topic.

Mr. Korell then briefly reviewed the discussion items for next week's meeting.

Mr. Morgan stated that the Cost Savings and Efficiency Work Group has completed their work and are preparing a report of their work. They will present a rough draft to the full committee next week.

## **5. Alternative Street Financing Options Survey**

Mr. Morgan reviewed the handout entitled “Street Financing Options Review - Finance Work Group Score Sheet.” The sheet identifies the ten different funding ideas originated by the group and criteria by which to evaluate the ideas. Mr. Korell asked the group members to make notes on the score sheet and stated that the group will complete the sheet as a group at a later date.

## **6. Data Request Updates**

Mr. Morgan stated that there were handouts for the group’s review prior to the next meeting and can be picked up by the door.

## **7. SID’s and Other Assessment Districts**

Mr. Korell stated that the issue of Sanitary and Improvement Districts (SID) and Special Assessment Districts (SAD) had been brought forth during the group’s discussions. The concept of an SID and how it can be used as a financing tool is well developed under state law. He explained that for any private piece of land outside the City limits, the infrastructure that goes in is the developer’s responsibility. The City’s obligation is to bring in water and sewer and to pave the roads. He noted that SIDs are identified under Nebraska law to allow this to happen. It is a financing vehicle to allow developers access to capital. As the piece of land is annexed into the City, the tax base comes in to the City, and if there is outstanding debt, the City has to absorb that. He stated that although this is a gross oversimplification of the process, he wanted to set the stage for further discussion.

Mr. Korell introduced Ken Bunker of Kutak Rock in Omaha, John Kuehl of Kirkpatrick Pettis, Karen Klein of the City of Omaha annexation department, and Chuck Addy of Baird Holm. Mr. Korell then asked each of the guests to describe their work background.

Mr. Bunker stated that for the last 28 years until this past August, he was the Omaha City Attorney and represented the City Planning Dept. His background is in land use finance and his responsibility in regard to suburban development was to develop controls and work with developers, and negotiate subdivision agreements. He has also coordinated downtown development and coming up with different financing mechanisms. He has accumulated experience with the Nebraska legislature as well. Mr. Bunker noted that Lincoln is very different from Omaha in terms of how we look at development. He then stated that there are many tools to use to help make for a sound development for suburban area and downtown. Without a sound Capital Improvement Program and annexation policy, SIDs don’t make a lot of sense, as they have to fit into an overall program to use them correctly. Mr. Bunker stated that he is now with Kutak Rock, working primarily in other communities around the country in

downtown  
development.

Mr. Kuehl stated that he is with Kirkpatrick Pettis and has been doing SID financing for about 19 years. He explained that he is here to answer questions and be honest and straightforward.

Ms. Klein has worked for the City since 1983 in the long range urban planning division. She stated that her work will be focusing on issues and problems that they have not been able to overcome.

Mr. Addy is with Baird Holm Law Office in Omaha and stated that they are bond counsel for all of the SIDs. Their function is to give opinions to Kirkpatrick Pettis to the effect that the obligation to the SIDs are validly issued and that the debt that is evidenced by the obligation is for a project that is within the scope and the power of the SID and that the interest on the debt is exempt from federal and state income tax. He stated that his function is as a gatekeeper, as sometimes he will say that the SID just does not have the power to finance the project or type of improvement. He stated that they do not represent any of the developers or SIDs as the SID counsel; they are the independent bond counsel that reviews the proceedings of the SID.

Mr. Kuehl clarified that when a district holds a meeting, the attorney for the district provides written minutes, which are given to Mr. Addy for his review in ensuring that everything was done according to statute. He noted that they cannot sell any of the debt instruments to the public until they have a legal opinion.

Mr. Bunker stated that a Special Assessment District is a district that is set up to sell bonds to fund a public improvement. The bonds are paid by special assessment. Special assessments are monies that are collected from properties that are specially benefitted by that improvement. The assessment is assessed against each individual property.

Mr. Bunker then stated that a Sanitary Improvement District is almost like a city -- it is effectively a municipality with severe restrictions and is set up to put in public improvements primarily for future annexation. It is different from an SAD -- SIDs can include special assessment areas in order to help pay the bonds, but they also have the ability to levy a general ad valorem tax that will pay the bonds that are general obligations of the SID itself. That tax is levied by way of property taxes against the property. Those taxes come in to pay the warrants and bonds.

Mr. Kuehl stated that one of the misconceptions is that if someone owns land, they can come to them and get financing and they will provide the financing to put the streets, sewers and stormsewers in. An SID puts that infrastructure in the ground and maintains it. Mr. Kuehl then provided an example as follows: let's say that someone has a plat with 100 lots in the subdivision, and it's going to cost a million dollars of financing to put in the improvements that they want. Let's say that the developer intends to build \$100,000 homes, so at full development, you will have \$10 million worth of financing. In the subdivision agreements with the City, we

have determined that if you have a debt ratio of 3.5%, with a reasonable building timeframe of 5-8 years, you could have \$350,000 worth of general obligation debt and the balance of that debt should be specially assessed. So under the example, 35% of that project of that project was a GO, 65% was specially assessment, so \$650,000 would be specially assessed against the property. He noted that one of the benefits of an SID is that we are taking 35% and it is a general obligation of the district payable over time. Currently, if the developer is paying that million dollars out of his pocket, he has to recoup his costs up front in the lot price. With an SID, you have a lower initial up front cost for the lot which allows more people to be able to purchase a home.

Mr. Bunger stated that the “specials” on the property remain in effect even after annexation. When we get down to the point where they City is going to annex the subdivision, the warrants have been paid, the City considers it as part of the overall annexation plan, and we’ll look at how that particular SID fits in with other SIDs. The specials on the property are still special assessments on the property, and those specials are still levied and collected by the government and used to pay debt. The general obligation part of the debt is really attributable to improvements that the City had largely put in anyway. So whether it is an SID putting it in or whether the City has to borrow money to put it in, it is not funded by specials.

Mr. Bunger stated that SIDs are used to put in major parks through interlocal agreements. Mr. Addy added that if you want to do a major intersection, the law provides that you could do an interlocal between the SID and the City or County. In many cases, five SIDs join together to do an interlocal to bring in the sewer line or street.

Mr. Bunger stated that the new statute which provides for interlocal agreements was broadened and allows the SID to do things that it cannot do by itself. The statute only prohibits SIDs from doing improvements outside of its district with regard to streets and parks. It does not prevent putting in sewer lines. Through the use of the interlocal agreement, several SIDs may join together to put in parks. He added that SIDs have been involved in putting in intersections for an interlocal agreement with the City or County or other SIDs. SIDs are the front funding mechanism for the interceptor sewers.

Mr. Addy stated that the real question is how you divide the expense and cost. Mr. Bunger stated that you can think of it as one big special assessment area with each SID being specially benefitted. Mr. Addy noted that it is paid with general obligation of the SID, so it is not on the balance sheet for the City until it is annexed. Mr. Bunger stated that the City is forced to annex sometimes depending on the debt structure of the SIDs.

Mr. Young brought up the Highlands situation some years ago. Mr. Seacrest responded that the Highlands had over \$20 million of debt, but when you looked at their tax base, it could serve \$6 million. So when they went into bankruptcy, we did what we call the “cram down” on the bond and warrant holders to take their \$20 million of debt and say we would pay them \$6 million. The day after that was done, the City could annex because the City had a tax base that could serve the \$6 million. Mr. Seacrest stated that bond holders lost, but the warrant holders lost

worse. Mr. Kuehl added that what came out of that case and Sarpy 65 is that bond holders have priority payment over warrant holders. He added that they have gotten smarter over the years and have done more phasing in contracts where they will do 150-175 lots and once it is 70% developed, they will look at it to do additional financing.

Mr. Bunger stated that SIDs are developer controlled, but after a few years, they become homeowner controlled. It is important to remember that the developer's interest is to sell the lots, the resident's interest is to see their taxes go down, which is not the City's interest, so it is important to have a good subdivision agreement.

Mr. Korell then asked how SIDs can be used to get money in the City's bucket. Mr. Addy stated that this is apolitical subdivision that has the power to levy tax against all the property in the district. It also has the power to levy special assessments against each individual lot to the extent that the improvements benefit the lots. In addition to improvements inside its boundaries, it can go outside its boundaries for sewers, civil defense warning systems, some recreational facilities and through a process of interlocal agreements, it can also do streets. When it does streets, the real question is what is the fair amount for the SID to pay. A lot of times, the City could join the process and pay for a portion of the costs. Sometimes the district pays all of the costs, and then it has the ability when others connect to it to reimburse the district for the costs that are overpaid. The problem is that if you load all the costs against one districts, the underwriter will say he won't finance all of that cost.

Mr. Bunger stated that the City of Omaha instituted what is called the sewer interceptor plan which provides for a mechanism for funding the oversize of the major interceptor sewers. Ms. Klein stated that they use population projections, housing projections, and they look at how much land will be needed for development. She then stated that they look at what the costs are and talk with developers and end up with priorities and a plan that decides which ones are going to be extended in those years and a cost per lot based on how many lots can be served in the watersheds. They also adjust a growth boundary based on that. It helps to makes growth more contiguous. The issue with that is that it is a fairly generous boundary. She stated that sewers are the only real control over growth. Mr. Bunger stated that the sewers are then deeded to the City, and there is a fund developed based on a fee that is paid by the developer on the lots and the fee is really paid through the SID. It brings some certainty that there will a major sewer developed in a certain area and a certain time period, which is important for planning and for fairness, so that the fee is looked at and adjusted from year to year.

Mr. Marvin asked how that is different from impact fees for water and sewer. Mr. Seacrest responded that they are very similar but you pay at the time of building permit. Ms. Klein added that the SID upfronts the cost, but then it is reimbursed on a per lot basis. Mr. Bunger stated that the real difference is that it is funded. It is a way of funding projects so that you can get the projects done.

Mr. Korell asked Mr. Addy to describe the interlocal agreement. Mr. Addy provided an example in that two SIDs and the City enter into a 3-party agreement, which says they are going to split

the costs. It will say who is responsible for going forward to award the contract, who is going to initially front the costs, and the mechanism for reimbursing each other. That gives the SID the power to pay for and be the general contractor on improving that street.

Mr. Bunger stated that SIDs have nothing to do with police and fire. It is the County that provides police and fire.

Ms. Klein stated that they look at all of the SIDs and eliminate the ones that aren't ready, which is approximately 80% of them, because their debt ratio is too high. They look at sales tax and the costs and revenues. She added that they also look at packaging them because some may have a cost and are offset by some that bring in revenue. They look at if the valuation will pay for the debt service. Then they have a list that they do an in depth study of. They come up with those costs, project the revenues based on the valuation and projection of sales tax and then look at how that comes out over a 10 year period. They have had everything from commercial areas that are brand new which they annex not so much because of the gain in sales tax, but because they are preventing their loss, especially on the super stores.

Mr. Addy stated that you could have partial annexations as well by taking out the commercial corner. Ms. Klein stated that the issue with that is that then they look at the remaining residential part and questioned when it will be annexed. Mr. Bunger stated that if the residents don't think they are getting their fair shot, they can litigate, so you should probably take the whole thing.

Mr. Severin stated that he didn't believe that the Highlands SID failed because it was an SID and asked if SIDs today are different than they were several years ago. Mr. Bunger stated that from the City's standpoint, there are a lot more regulations. Mr. Kuehl stated that we have gotten smarter. The subdivision agreement tells us what we have to do, and there are more checks and balances.

Mr. Bunger stated that although it is true that it is not the City's debt and the City is not responsible if the SID goes bankrupt, but there is debt that will have to be picked up from another part of the City. It is important that it doesn't happen because it means that you are not going to annex and grow in a way that you had planned and you don't want that stigma out there for the City.

Mr. Werner asked how this is good for the citizens of Lincoln. Ms. Klein stated that the advantage is that the City doesn't have to come up with the upfront money for that development. Mr. Bunger stated that it transfers the risk directly from the City taxpayer over to the bond holder. If it is done correctly, it will aid in the development of growth.

Mr. Hampton stated that Lincoln has a good example in Pine Lake in that Pine Lake has \$200,000-300,000 cash, and they are having trouble spending it before the City annexes it and takes it.

Mr. Zink asked about their experience in maintaining standards in infrastructure and how you control roads in this model. Ms. Klein stated that there are city standards that they are required to follow. Mr. Bunger stated that the problem is not undermaintaining, but being overmaintained as there are homeowners who are directly interested in maintaining it. Mr. Kuehl stated that the subdivision agreement states that any maintenance is done under the general fund.

Ms. Klein stated that another consideration is that soft costs, the engineering, legal and financial costs, for an SID, it averages about 35% of the construction costs. The average for the ones inside the city is under 20%.

Mr. Thietje asked how you handle the situation where you have arterial streets surrounding the SID and at the time the SID is created, a three lane road is sufficient, but over the buildout period, you find out you need more lanes. He specifically asked if all of that expected cost is built in to the interlocal agreement up front before the SID is approved. Ms. Klein stated that we don't require anything more than a three lane pavement, but in the last year, they have required them to do the grading for the ultimate size. Mr. Thietje then asked if the City has some authority to have the SID pay for the increased cost if it is not in the agreement. Mr. Bunger stated you can write it in to an agreement stating that at the time the improvement goes forward, the SID will come up with the funds. Mr. Addy stated that usually what happens is that the residents are demanding the service, so they will drive getting it done.

Ms. Klein stated that in terms of controlling growth, the sewer plan is the main factor that controls growth as there is a boundary that ends up being a negotiated boundary. She added that they don't control the amount of lots platted as long as it is in the boundary.

Mr. Bunger stated that if you look at SIDs, the concern in the City is that you are not paying for urban sprawl. Whether the City pays for the improvements and it's coming out of the tax bill right away or whether you let an SID pay and it will come out of the tax bill when you annex, you still have to have a good growth plan. It is not the SID, it is the amount of development, lot supply and other factors which go in to sprawl..

Mr. Werner then asked where does the savings of the SID show up to the citizens. Mr. Bunger stated that SIDs are a useful tool in finding the most efficient way to develop and reduce the risk to the City.

Mr. Seacrest asked if there weren't SIDs and special assessments, would that affect urban form. Mr. Bunger stated that he didn't feel the SID makes much difference in respect to urban form.

Ms. Jensen asked how Omaha would finance their infrastructure if they didn't use SIDs. Ms. Klein replied that they would probably do what a lot of other cities do, which is through assessment districts and possibly impact fees. Mr. Bunger stated that major streets in Omaha are financed through general obligation bonds. Mr. Thietje asked if Omaha is facing a large gap as

well. Mr. Bunger stated that there is a debt deficit, which is not necessarily attributable to the growth problem. Mr. Kuehl stated that in Douglas County, there is over \$200 million of financing of SID warrants and about as much as GO bonds, so there is over \$400 million of infrastructure financing in Douglas County alone.

Mr. Seacrest verified that the warrant rate is 7%, and then asked what the bond rate is. Mr. Kuehl replied that is roughly 2% on a one year bond out to 5.5% on a 20 year bond. Mr. Seacrest pointed out that in Lincoln, we are paying 2 points more.

Mr. Korell and the work group thanked the presenters for their time and information.

Mr. Korell then adjourned the meeting at 5:23 p.m.